CIA LONG-RANGE PLANNING ISSUE

RECORDS CONTROL, REVIEW, AND PUBLIC DISCLOSURE (FOIA)

FOIA/PRIVACY ACT/RECORDS REVIEW

POSSIBLE POLICY QUESTIONS

1. In FOIA/Privacy response, CIA is "currently the slowest responding federal agency and the situation is expected to worsen" (Page 9). This is expected to lead to confrontation with the judiciary. What are we/can we do about this?

2. In terms of the FOI/PA problems, is there an adequate record (in terms of budget requests, legislative relief requests, and actual responses) to show we exerted due diligence in attempting to satisfy the requests? Can we improve the internal FOI/PA process by centralizing responsibility or by adopting uniform procedures/guidelines?

3. It appears that with respect to systematic declassification, rigorous compliance with the law is not practical. In addition, the paper notes that the short-term risk of not fully complying is low. Should we therefore work toward seeking exemption, even though this could take some time, as opposed to attempting to seek more resources?

4. Long-term trends should be discussed. Projections of records review show a large backlog in 1989; we may be in worse shape than now despite the additional staff work. What can we do about it?

Management Issue #6: What must CIA do to adequately comply with statutory requirements concerning records control, review, and public disclosure without significantly impeding performance of its primary missions?

I. SUMMARY STATEMENT:

To date, the manpower allocated to the systematic classification review of 20-year-old records and to the processing of requests for access to records has been insufficient to permit the Agency to comply with legal requirements of Executive Order 12065. We estimate that, at the current rate, less than one-third of the systematic review workload will be accomplished by 1 December 1988, the date on which, according to the Order, federal agencies are to catch up to the 20-year review timetable. It is more difficult to predict the FOI/PA request-processing workload through the next 5-7 years because of the many unknowns; however, our best estimate is that the already sizable processing backlogs, particularly the one for initial requests, will inevitably grow and the time required for response will lengthen unless additional manpower is committed or the operation can be made more efficient.

Prospects for solution of the systematic classification review problem may be good. We understand that in October 1980 the General Accounting Office will issue a study recommending that the National Security Council amend the Order to eliminate the systematic review requirement. This recommendation will meet with strong opposition, of course, but, when the National Security Council takes up the matter, a persuasive case can be made for at least exempting intelligence records.

The other aspect of this issue, handling FOI/PA requests from members of the public, does not lend itself to easy solutions. The rational answer, total exemption from the Freedom of Information Act, is not politically feasible, and the Justice Department amendments which have yet to be formally proposed, while helpful, would not fully solve our resource problem. Sufficient positions should be included in the CIA budget to provide slots, at the minimum, for the personnel currently employed in the program, and consideration should be given to augmenting their number, taking into account the availability of qualified personnel and the effect on other Agency activities. At the same time, the processing procedures currently utilized by the Agency should be thoroughly studied to determine whether the system could be made more efficient without undue risk to intelligence sources and methods.

Although these two problems are closely related, for ease of presentation they have been treated separately in this paper.

II. BACKGROUND

Executive Order 11652, which took effect 1 June 1972, stipulated that all classified records must be systematically reviewed for declassification by the time that they attain 30 years of age, and, unless the head of the department or agency personally determines in writing the need for them to retain their classification, that the records be declassified. It was superseded on 1 December 1978 by Executive Order 12065, which limited systematic review to permanent records but required that these records be reviewed for declassification by the time that they became 20 years old. Foreign government information, however, did not have to be reviewed until 30 years from its date of origin. Agencies were directed to complete the transition from 30-year review to 20-year review within 10 years from the effective date of the Order (i.e., by 1 December 1988). The heads of agencies could extend the classification of records for no more than 10 years, unless exceptions were granted by the Director of the Information Security Oversight Office (ISOO), at which time the records would have to be reviewed for declassification once again. (The Director of ISOO, in October 1979, waived the 10-year review requirement for six categories of intelligence data. Records covered by this waiver need not be re-reviewed until 30 years after the initial review.)

The then Special Assistant to the Executive Director for Information Control (SAIC) was assigned responsibility for coordinating the Agency's initial systematic review program. A three-man team of CIA annuitants, independent contractors employed by the DDO, was assembled in December 1972 and commenced the review of certain OSS records held by the National Archives and Records Service (NARS), principally the approximately 1,000 cubic feet of Research and Analysis Branch records (Record Group 226) deposited at NARS by the Department of State This task was essentially completed by September 1974, and the OSS review team, which eventually expanded to include as many as 15 reviewers, turned its attention to the OSS records in CIA's custody. During 1973-74, arrangements were also made for the review by staff personnel of OSS motion picture films and maps held by the Agency, and, upon the completion of these projects, the declassified records were offered to the National Archives for accessioning.

The task of systematically reviewing 30-year-old CIG and CIA records was not addressed until late-1976. The question of whether the program should be centralized or decentralized was decided on 1 March 1977 by the Agency's Executive Advisory Group, which opted for the former approach. An action plan was signed by the DDCI on 2 May 1977 establishing the Records Review Branch within the Information Systems and Analysis Staff of the DDA (the predecessor of today's Classification Review Division, Office of Information Services--CRD/OIS). By the end of 1977, the new unit was staffed, guidelines had been developed, and the review of CIG/CIA records commenced, with the first records formally declassified on 18 November 1977.

III. CURRENT SITUATION

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[redacted]

By 31 August 1980, the OSS review team had completed the review of 1,437 cubic feet (2,874,000 pages, based upon an average of 2,000 pages per cubic foot) of the remaining OSS records held by the Agency. The team has been able to declassify approximately 90 percent of these records. Some 1,871 cubic feet (3,742,000 pages) remain, but the production rate has improved to the point that it is now expected that the project will be completed in late-1982.

CRD, as of 31 August 1980, had completed the review of 1,200 cubic feet (2,400,000 pages) of permanent CIG/CIA records and the classification determinations have been recorded in DARE, an automated index. Of the material

reviewed to date, approximately 15 percent overall has been declassified. It is difficult to determine precisely the remaining workload because of several unknowns--e.g., some boxes at the Records Center may not be full and some records now categorized as "permanent" may later be reappraised as "temporary"--but the best estimate is that another 22,080 cubic feet (44,160,000 pages) exist of permanent records which will be 20 years old by 1988, the year in which we are to catch up to the 20-year review cycle. The current rate of production in CRD is 5,120 pages per work-day, or, given the present staff, 1,280,000 pages per year. Projecting this through CY 1988, it appears that CRD will manage to complete less than 30 percent of the anticipated workload unless the staff is augmented.

There is one promising note, however. The Government Accounting Office (GAO), at the direction of the Congress, has made a study of the systematic classification review program and has concluded that it is not cost-effective. Not only, as in the case of the CIA, are significant numbers of records retaining their classification, but even when records can be declassified they are apt to be of little interest to researchers. A GAO report is scheduled for distribution in October 1980 which will recommend that the National Security Council (NSC) modify Executive Order 12065 to eliminate the requirement for systematic classification review. Researchers' needs, according to the GAO, can be met at less cost through mandatory classification review requests for specific documents.

IV. STATEMENT OF TRENDS AND FUTURE DEVELOPMENT OF THE ISSUE

The discussion that follows is based upon the assumptions listed below:

Assumption No. 1. That the OSS review team will complete the review of the remaining OSS records by late-1982, and that this portion of the systematic review workload can be disregarded in the remainder of this paper.

Assumption No. 2. That records reviews and revisions of records control schedules over the next 5-7 years will not substantially reduce the quantity of permanent CIG/CIA records (22,080 cubic feet/44,160,000 pages) that it is

estimated must be reviewed by 1 December 1988 to be in full compliance with Executive Order 12065.

Assumption No. 3. That the current production rate of CRD (5,120 pages per day) cannot be significantly increased without an increase in staff.

Assumption No. 4. That no additional tasks will be assigned to CRD. (In addition to the systematic review, CRD is now responsible for such matters as reviewing manuscripts submitted to the Publication Review Board and galleys proposed for publication in the Department of State's Foreign Relations of the United States.)

It is estimated that to comply fully with Executive Order 12065, 44,057,600 pages of CIG/CIA material will have to be systematically reviewed during the period FY 1981 through 1 December 1988. If assumptions 2, 3, and 4 are valid, the equivalent of 32 full-time reviewers will be able to complete the review of only 1,280,000 pages each year. At this rate, only 27.4 percent of the records will have been reviewed by the end of FY 1988, and less than 30.2 percent by the end of FY 1989.

End of Fiscal Year	Cumulative Total of Pages Reviewed	Remaining Workload
1981	3,782,400	42,777,600
1982	5,062,400	41,497,600
1983	6,342,400	40,217,600
1984	7,622,400	38,937,600
1985	8,902,400	37,657,600
1986	10,182,400	36,377,600
1987	11,462,400	35,097,600
1988	12,742,400	33,817,600
1989	14,022,400	32,537,600

CRD has been authorized four new staff positions for FY 1981. If these positions are filled and retained throughout the period 1981-88, approximately 1,300,000 more pages of material can be reviewed, or an additional 3 percent of the total workload, during this time frame.

Beginning in FY 1988, the backlog would be exacerbated by the requirement that we perform the 10-year re-review of records initially reviewed in FY 1978, unless the records meet the criteria of ISOO's waiver letter of October 1979 and thus need not be re-reviewed until 30 years have elapsed. Additionally, in FY 1989 and the years following, many other classified CIA records will attain 20 years of age and be subject to systematic review. The volume of these records has not been estimated to date, but it is likely, because of the re-review requirement, that the total new workload will be considerably larger than now. Lacking more resources or some form of relief/exemption, the Agency will inevitably fall further and further behind the schedule established by the Order.

The impact upon the Agency during this period would depend upon future developments. Assuming that things continue as they are, the Agency will be unable to comply with the systematic review timetable of Executive Order 12065. Sooner or later, this would be pointed out by ISOO in its annual report. Criticism could be expected from both the private sector (ACLU, AHA, etc.) and public sector (ISOO, GAO, etc.) and, if the CIA is the only agency not in substantial compliance with the Order (which is improbable), the media might treat this as additional evidence of the CIA's disregard of the law. It seems unlikely, however, that legal sanctions against the Agency would ensue. The most undesirable consequence that might occur would be if the Congress, reacting to pressure from interested parties, enacted legislation governing classification/declassification.

If the Agency diverted the additional manpower to this program sufficient to meet the classification review schedule, and this manpower had to be taken from other activities, the Agency's ability to perform its basic intelligence mission would certainly be impaired.

On the other hand, if the NSC could be persuaded to amend the Order to eliminate the requirement of systematic review, the problem would disappear and the resources currently committed to this program could be used for other purposes.

V. PROBLEM STATEMENT:

Executive Order 12065 requires that all classified permanent records be reviewed for declassification by the time that they attain 20 years of age, with the exception of foreign government information, which need not be reviewed until it becomes 30 years old. Federal agencies were given 10 years, i.e., until 1 December 1988, to comply with this schedule. It appears, however, that at the present rate the Agency will have completed the review of no more than 30 percent of its permanent, classified, 20-year-old records for the period 1946-68 by 1 December 1988. The problem is to determine whether it is possible for the CIA to meet the systematic review requirement of Executive Order 12065 without unduly taxing its manpower resources or impairing the Agency's ability to perform its foreign intelligence mission.

VI. ALTERNATIVE COURSES OF ACTION:

Resource Assumption No. 1. That there will be no resource growth for the next 5-7 years.

Option No. 1. Make a concerted effort to persuade the NSC to amend Executive Order 12065, eliminating the provision for systematic review of permanent records. It would be to our advantage if consideration of the GAO's recommendation could be deferred until after the November election inasmuch as the administration would then be less concerned with the predictable opposition of such interested groups as the various associations of historians. If the NSC proves to be unwilling to discontinue the government-wide systematic review program, we should then press for the exemption of intelligence records, pointing out that it is unlikely that we will be declassifying more than 15-20 percent of our records overall and not more than 5 percent of our sensitive operational records. Obviously, there would be no systematic review problem if the legal requirement were to be eliminated, and the Agency could then utilize the manpower currently committed to this work for other purposes. It is not anticipated that the FOI/PA request workload of the Agency would increase significantly as a consequence.

Option No. 2. Attempt to reduce the workload through the revision of records control schedules and the streamlining of systematic review procedures. Working closely with officials at NARS, we could try to reduce the volume of records appraised as permanent, thereby

lessening the systematic review workload. (This process is currently underway.) Moreover, with the approval of ISOO and the Archivist, arrangements might be made whereby the DCI could certify the need for specified categories of records to retain their classification beyond 20 years, as opposed to ruling on individual documents. (This has been successfully negotiated in the case of DDO raw intelligence information reports and cables.) To the degree that we were successful in these efforts, the number of records to be reviewed would be reduced. Whether the workload can be lightened to the point that the current work force could complete the review on schedule is problematical.

Option No. 3. Make no substantial change in Agency practice. This would mean that the Agency would complete less than 30 percent of the projected systematic review workload by 1 December 1988, and, in the ensuing years, would fall further and further behind. While the Agency might be subjected to criticism, our inability to comply with the Order would probably not lead to legal sanctions in the short run.

Resource Assumption No. 2. That additional resources will be available for allocation to the systematic review program over the next 5-7 years.

An increase of 10 percent in resources, i.e., the addition of four more positions already authorized for FY 1981, would have little impact on the problem. We would still have a significant shortfall. The only benefit to the Agency would be that the attempt to augment the work force would provide further evidence that we had made a sincere effort to comply with the Order's schedule.

Assuming once again that we have accurately projected the volume of records which must be reviewed and that the rate of production cannot be significantly improved, it would require approximately 135 reviewers (i.e., 103 additional personnel) to complete the review of 44,057,600 pages of material by 1 December 1988. Even if the positions were available and sufficient work space could be located, however, it would undoubtedly be impossible to find 103 persons with the requisite experience without severely impairing other, more essential, Agency activities.

II. BACKGROUND

The legal requirements for responding to requests from members of the public for access to records are set forth in the Freedom of Information Act (5 USC 552), the Privacy Act (5 USC 552a), section 3-5 of Executive Order 12065, and the Agency's implementing rules and regulations. Privacy Act (PA) requests can be either for access to records pertaining to the requester or for the amendment or expungement of information contained in those records. To be eligible for the benefits of the PA, the requester must be a U.S. citizen or a permanent resident alien. Freedom of Information Act (FOIA) requests may be submitted by any person, regardless of nationality, and can concern any topic. Executive Order 12065 (EO) authorizes any person, or another federal agency, to request the mandatory classification review of classified records. The laws specify categories of information that are exempted from disclosure, but, when feasible, nonexempt portions of documents must be released. Failure on the part of an agency to release requested records, or to act upon requests within the time limits specified by law, can lead to administrative appeals or, in the case of FOIA and PA requests, litigation.

In the past, management's attention has been primarily focused on the "perception" problem that has arisen in connection with FOI/PA requests--i.e., the mistaken belief held by others that the CIA can no longer protect secrets. This paper addresses the administrative burden and the likely consequences of our growing processing backlogs.

The FOIA had little impact upon the Agency until sweeping amendments were enacted in December 1974, which became effective 19 February 1975. (The PA was also enacted in December 1974, taking effect on 27 September 1975.) The only appreciable pre-1975 request activity affecting the Agency arose from the mandatory classification review provisions of Executive Order 11652. Even that was insignificant in terms of today's request volume. Between 1 June 1972 (when Executive Order 11652 was implemented) and the start of 1975, only 331 EO requests were received. Requests did not arrive in great volume until mid-1975. Around that time, the media began devoting attention to allegations of improper domestic activities by the CIA. [redacted] 25X1

Before long, organized campaigns resulted in the Agency being inundated with form letter requests for personal records, and, by the end of 1975, the Agency had logged a total of 7,393 requests, the majority of them

being requests for personal records. We succeeded in closing out 5,859 of these requests during 1975--a high percentage resulted in "no record" responses--but we carried a backlog of over 1,500 requests into 1976. With the single exception of 1976, that backlog of initial requests has grown each ensuing year. (See Part VII, Tab B, for workload/production statistics on initial requests, appeals, and litigation.)

The manpower resources allocated to FOI/PA processing has steadily increased through the years. The figures reported to the Congress were as follows:

Year	Man-Years*	Salaries
1975		
1976		
1977		
1978		
1979		

25X1

Although the manpower devoted to FOI/PA processing has increased over the years, whereas the number of new requests/appeals/litigations received has either leveled off or declined, the total workload facing the Agency has grown and the time required for responses has lengthened. A lack of efficiency may be part of the answer, but other factors are present, such as:

a. Simple requests (e.g., "no record" replies, copies of previously released records, etc.) are answered relatively promptly, whereas the more difficult cases tend to be carried over from year to year in the backlog.

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*The above figures are based upon weekly reports submitted to IPD by the components and they are known, in some instances, to be incomplete. The totals for 1975, for example, did not include work on PA requests and did not take into account nonwork days, i.e., holidays and leave. The apparent drop in 1979 resulted from a misunderstanding which caused a major Agency component to discontinue the reporting of man-hours expended by persons who did not work full time on FOI/PA. (We will cover this in our report to the Congress for CY 1980.) Moreover, such costs as supplies, equipment rentals, computer support, etc., have never been calculated.

b. Many of our recent requesters (e.g., lawyers for corporations) are more sophisticated than earlier requesters, and the requests they submit are often complex and time-consuming to process.

c. The backlog "mix" has changed, with a greater proportion of appeals and litigation cases. Cases that get into court are particularly demanding because of the need to answer interrogatories, prepare indexes, etc., and, when court-imposed deadlines must be met, work on initial requests and appeals suffers.

d. The first-in, first-out policy dictated by the Open America case results in relatively uncomplicated requests being stalled in heavily backlogged components (viz., the DDO) while voluminous requests received at an earlier date are being processed. (To partially counteract this, the DDO recently established a separate queue for document referrals from other agencies. This procedural change has not been in effect long enough to have a significant impact on the backlog, however.)

e. In the DDO, where the FOI/PA staff has been recently enlarged, experienced FOI/PA personnel have been diverted from processing chores to train new personnel and to check their work. Productivity suffers until the new personnel gain experience.

f. Concern over the possibility of inadvertently disclosing sensitive information, particularly in the DDO, has lead to the establishment of multiple reviews of the same record, slowing up the process.

As a result of the developments enumerated above, plus the decentralized nature of our files and the sensitivity of the information we hold, the CIA has gained the reputation of being the slowest agency in the government in responding to requests. The reputation is probably deserved. A recent study of 9,308 cases revealed that our response times ranged from the same day to as much as 1,568 days from receipt of request (over 4 years).

III. CURRENT SITUATION

The Agency currently has 69 full-time staff employees who work exclusively on FOI/PA matters. In addition, there are four part-time staff personnel and 40 part-time contract employees, each of whom works on FOI/PA 30 hours per week. This would equate to 102 full-time employees. Taking into account other personnel who are involved in FOI/PA processing but have other duties as well, the Agency thus far in CY 1980 has been devoting the equivalent of 143 full-time employees to the processing of FOI/PA requests, appeals, and litigation. The Agency's budgets for FY 1980 and FY 1981 contained no provision for FOI/PA slots. The Congress restored 63 positions to the FY 1980 budget, however, and is expected to do so for the FY 1981 budget. The FY 1982 budget, which will soon be submitted, will provide for 63 FOI/PA positions. It is also tentatively planned to ask the Congress for a supplemental appropriation for 68 additional FOI/PA positions for FY 1981, although it is anticipated that this initiative may be killed by the Office of Management and Budget (OMB).

As of 10 September 1980, the Agency was faced with backlogs of 2,949 initial requests, 393 administrative appeals, and 89 court cases. The average number of initial requests closed out per week by the Agency has declined each year, from a high of 112.7 requests per week in 1975 to a low of 51.5 for the current year. The component with the largest backlogs, the DDO, is contributing over 50 percent of the manpower Agency-wide. Some of the factors responsible for slowing down DDO processing have been discussed in the preceding section. Since all Agency processing must be completed before a case can be closed, and the DDO is involved in the majority of all requests (at least 70 percent), response times are more often than not keyed to the DDO's FOI/PA operation. The DDO is also involved in a high percentage of all appeals and litigations, although it appears that the OGC has been a major bottleneck on appeals. (Some 90 appeal cases, at last report, were awaiting OGC action. Inasmuch as OGC must give priority treatment to litigation, appeals suffer.)

Increasing litigation demands, in particular, have had a definite impact on the processing of both appeals and initial requests within the DDO. 25X1

During the first eight months of 1980, 62 percent of the manpower available in the DDO's Appeals and

Litigation Branch (8 man-years) was allocated to litigation. Moreover, in order to meet court deadlines, it was necessary to divert the equivalent of 6.1 man-years from the DDO Initial Review Branch to help out on litigation, thereby slowing down initial processing.

It should also be noted that initial processing of cases in the DDO is now more thorough than formerly. Essentially, initial cases are being processed in the same manner as appeals. While this practice will eventually pay dividends in coping with appeals and litigation, it does tend to slow up the completion of action on initial requests.

The Agency processes on a first-in, first-out basis. This does not mean, however, that every request is answered before those received at a later date. Each component processes requests in the order in which they are received, and, if no backlog exists, a request will receive immediate attention. Some requests can therefore be answered quickly. The first-in, first-out policy is followed to enable the Agency to seek, via an Open America motion, a stay from the trial court to allow the administrative processing to continue in those cases where suit is brought over our failure to respond within the statutory deadline. In order to prevail, the Agency must establish that it is proceeding with its FOI/PA workload with due diligence and that the inability to respond within the statutorily established time period is not the result of neglect or unjustified failure to allocate sufficient manpower. It is noteworthy that, in a recent case, the plaintiff, Justin Simon, is directly challenging our due diligence argument on the grounds that the Agency has failed to request appropriations from the Congress sufficient to enable the CIA to cope with its FOI/PA workload.

We are advised by OLC that the prospects for obtaining legislative relief from the FOIA are nil as far as the 96th Congress is concerned. Our best hope rests with the amendments to be put forward by the Department of Justice. It is difficult at this time to assess the impact of these amendments, if enacted, upon our FOI/PA workload. It is doubtful, however whether the work would be lessened by more than 10 percent. (The amendments, of course, would not affect PA or EO requests, which together comprise almost 60 percent of the total requests received.)

IV. STATEMENT OF TRENDS AND FUTURE DEVELOPMENT OF THE ISSUE

The discussion of trends and future developments is based upon the following assumptions:

Assumption No. 1. That the Agency's FOI/PA program will continue to be decentralized.

Assumption No. 2. That the manpower resources available today will remain constant throughout the next 5-7 years.

Assumption No. 3. That the productivity of the DDO's FOI/PA unit will increase as new employees acquire experience.

Assumption No. 4. That the number of new requests over the next few years will approximate that experienced during the past two years, i.e., 3100-3200 requests per year.

Assumption No. 5. That government-wide fee waiver criteria, more liberal than those applied by the Agency, will not be imposed.

It is difficult, perhaps even impossible, to predict accurately the Agency's FOI/PA workload through FY 1981, let alone FY 1988. We have no control over the number of requests submitted or the number of requesters who will eventually file administrative appeals or resort to the courts. A quick perusal of the statistical tables at Part VII, Tab B, reveals no long-range trends. Moreover, in a sense, these numbers are meaningless since not all requests require the same amount of manpower to process. A request could involve just the review of a single document referred to us by another agency, or, at the other extreme, tens of thousands of documents. (For example, a pending request for access to records on MIAs in Southeast Asia will require the review of approximately 30,000 DDO reports.)

An earlier attempt was made by the Management and Assessment Staff of the DDA to model the FOI/PA process. In a report published in December 1978, it was projected that the initial request backlog would increase at the rate of 91 cases a month (1,092 per year) and the appeals backlog by 12 cases a month (144 per year). Further, it was projected that by September 1981 the system would be so glutted that the available manpower would only be able

to respond to "no record" cases. Fortunately, the volume of new requests has been lower than was foreseen, and it appears that the gloomy prognostications of this study will not totally come to pass.

During CY 1979, the Agency was able to complete action on an average of 59.3 requests per week. Thus far in CY 1980, however, despite a significant increase in the manpower employed on FOI/PA processing in the DDO, the average weekly completion rate dropped to 51.5. We are assuming that productivity in the DDO will improve in the near future, and that, as a consequence, the Agency's weekly average for completed cases in the coming years will equal or at least approach that of CY 1979. If this assumption is valid, and the number of new requests each year falls into the 3,100-3,200 range, then the initial requests backlog should grow by no more than 100 cases each year. At this rate, the backlog of unanswered initial requests would be in the neighborhood of 3,750 cases by the end of FY 1988. The average time required for response, however, will gradually lengthen.

The number of appeals filed in CY 1980 seems to be declining significantly (56 percent) from CY 1979. The appeals backlog has decreased slightly, and we understand that action on numerous cases is close to completion. Our educated guess is that the processing backlog will be no larger than 400 cases by the end of FY 1988. Litigation demands may preclude any substantial reduction of the backlog.

The number of FOI/PA suits brought against the Agency during CY 1980, on the other hand, is running 27 percent above CY 1979, many of them based upon our failure to respond in a timely manner. A larger proportion of the total available manpower will probably be required for FOI/PA litigation during the coming years. The backlog of court cases, now 89, will undoubtedly grow. It should be noted that, even when the court grants an Open America motion for a stay, the judge usually requires that the case be completed within a finite and specific time period.

Congressional action could also affect the FOI/PA workload. If the FOIA is eventually amended to include the (b)(10) exemption proposed by Justice, information certified by the DCI to be intelligence obtained from a person or organization not employed by the U.S. government, or which tends to identify a source or potential source, or which concerns the design or use of scientific

or technical collection systems would be (with two exceptions) exempt from disclosure. The certification would not be subject to judicial review. This would not only reduce the amount of sanitizing that is required, but would also simplify the handling of court cases. Indeed, it might well deter persons in the future from bringing suit. It would probably not apply, however, to ongoing litigation, and whether this relief would apply to requests/appeals already received is also questionable.

The Congress has also been under some pressure to clarify and standardize the matter of fees. It has been proposed by some quarters that agencies be required to waive fees for requests under certain circumstances, such as requests from nonprofit organizations. If this were done, the Agency would undoubtedly receive more requests than anticipated. Because of our decentralized systems of records, search costs are high and, to date, this has been a major restraint on requesters. From the start of CY 1980 through 10 September, for example, 264 FOIA requests were either canceled or withdrawn, usually because the requester was not prepared to pay the estimated charges.

The principal impact of FOI/PA on the Agency today is the diversion of over 100 employees to activities totally unrelated--some would say inimical--to its basic intelligence mission. Despite this resource expenditure, the CIA's inability to comply with response deadlines has caused its public image to suffer. Not a day goes by that IPD does not receive telephone calls or letters from angry, frustrated requesters who fail to understand why an intelligence agency, presumably geared to act immediately in time of national crisis, requires two or more years to locate records and review them for release. Some charge that the Agency is deliberately delaying, to hide misdeeds, while awaiting legislative relief. Others levy charges of inefficiency. (See Part VII, Tab C, for a representative statement of our critics' views.)

There is a remote possibility that complaints could lead the Congress to demand that the Agency clean up the request backlog and get into a posture where most requests could be answered in a timely manner, as was done with the FBI. The FBI, in 1977, as a result of hearings before its oversight subcommittee in the House, assigned 282 special agents, drawn from various field divisions, to FBI Headquarters to work on the FOI/PA backlog. This operation, dubbed "Project Onslaught," lasted for five months. At the same time, the permanent FOI/PA staff was nearly doubled in size. Although Project Onslaught resulted in

wiping out most of the FBI's backlog, it also resulted in the release of a considerable amount of sensitive data inadvertantly. If the CIA were faced with the same demand, the problems involved in assembling and training a special work force and finding suitable office space would be enormous, not to mention the impact that this would have on other, more important activities. Moreover, inexperience and haste could lead to the inadvertent disclosure of sensitive data, as occurred in the FBI.

The Agency's FOI/PA problems could also lead to confrontations with the judiciary. The FOIA calls for judges to refer to the Office of Personnel Management (OPM) any instances where agency personnel are suspected of having acted in an arbitrary or capricious manner. OPM must then investigate the matter and, if the charges are substantiated, recommend disciplinary action against the employee(s) to the administrative authority of the agency concerned. (This was done on only one occasion, and no disciplinary action was recommended by OPM inasmuch as it was unable to pinpoint responsibility.) Another possibility is that, if the CIA failed to meet a court deadline for the production of records, a judge could order the release of the disputed records. Absent an immediate appeal, failure to do so could result in a contempt citation for a CIA official. Indeed, a judge could conceivably order the Agency to allocate additional manpower to FOI/PA processing, and find CIA officials in contempt if they failed to act.

In summary, the CIA is currently the slowest agency to respond to FOI/PA requests despite a current manpower commitment of over 140 man-years per year. The situation is expected to worsen somewhat in the years to come unless remedial action is taken. In the meantime, requesters are unhappy and taking their complaints to the Congress and the courts.

V. PROBLEM STATEMENT:

Because of the volume of requests received, the complexity of our systems of records, and the sensitive nature of the information held by the Agency, the CIA is rarely able to meet the response deadlines for FOIA, PA, and EO requests. Processing backlogs for initial requests, administrative appeals, and litigation have steadily grown and the times required for replies have lengthened, sometimes taking as long as 4 years. Increasingly, requesters, understandably irritated by the delays, have invoked their right to appeal or bring suit for nonresponse. The manpower required to meet court deadlines tends to divert resources from the processing of initial requests and appeals, thereby further slowing our responses and creating conditions which lead to still more court suits. Although the Agency is currently devoting the equivalent of 143 full-time employees to this program and has the equivalent of 102 full-time staff and contract employees working exclusively on FOI/PA matters, there have never been provisions for more than 63 FOI/PA positions in the CIA budget. The situation, which is bad today, will only worsen in the years to come unless the operation can be made more efficient or additional manpower can be allocated to the program. The problem is to determine how processing can be streamlined without diminution of our ability to protect intelligence sources and methods, or, alternatively, how additional personnel with the requisite experience can be allocated to FOI/PA processing without impairment of the Agency's ability to carry out its basic missions.

VI. ALTERNATIVE COURSE OF ACTION:

Resource Assumption No. 1. That there will be no resource growth for the next 5-7 years.

Option No. 1. Conduct a study of the Agency's FOI/PA procedures in an effort to determine whether request processing could be speeded up without jeopardizing intelligence sources and methods. The last such study was done by the Management and Assessment Staff of the DDA. Its report, published in December 1978, was considered by the IRC Working Group, and a few changes were made in existing procedures and responsibilities. However, some of the other recommendations/questions of this report and other studies warrant further consideration. For example:

- One step that would help to reduce the backlog in initial requests would be to establish a separate

queue for requests involving a large quantity of records, as is done in the FBI. The simpler FOI/PA cases could then be answered while earlier requesters who had asked for large numbers of documents were required to wait until the other voluminous requests received before theirs had been processed.

- The question of the number of times a document should be reviewed should also be examined, and perhaps the current procedures could be streamlined without unacceptable risk.

- With respect to appeals, increased processing time is being occasioned by the backlog in OGC. The services of paralegal personnel are necessarily being diverted from appeal processing because of significant and expanding litigation demands. A moderate increase in personnel (2-4 full-time positions) would significantly improve productivity and should be considered.

- It has been suggested that the workload for the Agency might be reduced if IPD were to increase its contacts with requesters telephonically to assist them in narrowing the scope of their requests.

The foregoing are merely illustrative of measures that could be considered to improve efficiency and to expedite processing.

Option No. 2. Seek a total exemption from the FOIA, PA, and the mandatory classification review provisions of Executive Order 12065. While this would eliminate the problem, there appears to be no possibility of success.

Option No. 3. Make no substantial change in current Agency practice. This would probably result in the further growth of our backlogs and in a gradual lengthening of the time required for responses. When challenged in the courts, the Agency's defense would continue to be that it is devoting as much manpower to FOI/PA processing as can be spared and that, to be fair to all, requests are handled on a first-in, first-out basis, in accordance with the principles established in the Open America case. In order to prevail before the courts, it is essential that the Agency be able to establish that the backlog problem

has not resulted from neglect or unjustified failure to allocate sufficient manpower. In this context, it would probably be helpful if the CIA budget carried provisions for at least enough positions to accommodate all of the personnel currently employed on a full-time basis in FOI/PA processing.

Resource Assumption No. 2. That additional resources will be available for allocation to FOI/PA processing over the next 5-7 years.

We could seek a supplemental appropriation from the Congress to enable us to eliminate, or at least substantially reduce, the initial request processing backlog. A preliminary study indicates that we would need positions for 68 additional staff employees, plus sufficient funds to cover the acquisition of office space and other overhead costs. In addition, it is proposed that we ask for $500,000 to cover overtime expenditures in the DDO. The additional positions would be distributed among the DDO, IPD, OS, and NFAC. Once the backlog has been reduced, then it would probably be possible to respond to requests in a timely manner with a somewhat lesser commitment of manpower.

Even if the Congress should act favorably on this proposal--assuming that it would be cleared by OMB--it is questionable whether we could obtain the services of persons with sufficient experience to entrust with the review of sensitive information without, at the same time, adversely affecting the ability of the Agency to carry out its basic mission. One potential source of manpower is the annuitant pool, which we are already tapping. Another source would be the personnel who are currently involved in the systematic review program, assuming that prospects are good for amending Executive Order 12065 to eliminate this requirement.

Regardless of whether a request for additional positions and funds would be approved, or whether, if approved, we could fill the positions with persons having the desired background and experience, the fact that the Agency had made a sincere effort to expedite its FOI/PA processing through additional manpower would place us in a more secure legal posture before the courts. While we have brought to the attention of the Congress the workload imposed by the FOI/PA program, we have to date neither specifically

requested additional appropriations in order to respond to the requests nor taken action similar to the FBI in temporarily assigning teams of professional employees in order to accomplish the work.

VII. ATTACHMENTS:

Tab A - Issue Team Members

Tab B - FOI/PA Workload/Production Statistics

Tab C - Statement of the Director, Freedom of Information Clearinghouse, Before the Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs, U.S. Senate, 19 August 1980.

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LONG-RANGE PLANNING ISSUE TEAM

Lead Component DDA (with OGC)

ISSUE: Management Issue #6: What must CIA do to adequately comply with statutory requirements concerning records control, review, and public disclosure without signifcantly impeding performance of its primary missions?

TEAM MEMBERS:	Name	Component	Telephone
Chairman			
Members:			
1.			
2.			
3.			
4.			
5.			
6.			

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FOI/PA Workload/Production Statistics[1]

	1975	1976	1977	1978	1979	1980 (thru 9/10)	Totals
Initial Requests							
Requests received	7393	3491	4843	4172	3122	2154	25175
Cases closed[2]	5859	3813	3706	3617	3086	1854	21935
Administrative Appeals							
Appeals received	303	276	185	160	226	68	1218
Appeals closed[2]	178	155	139	73	133	89	628
Litigation							
Cases filed[3]	29	31	20	27	25	22	154
Cases closed	2	6	21	24	11	3	67

[1]These are end-of-year statistics. Inasmuch as cases may be closed or reopened retroactively, the size of the backlog cannot be derived by substracting cases closed from requests received. In addition, a number of cases have shifted to the appeal stage, or from the appeal stage to litigation, without being accounted for in these statistics. The backlogs as of 10 September 1980 were 2,949 initial cases, 393 appeals and 89 court cases.

[2]Requests/appeals going into the appeal or litigation stages owing to our failure to respond are now treated as "closed" cases. This practice was not followed in the early years, however, and a number of cases included as open requests or appeals in the tables above have in fact been closed.

[3]Litigation "cases" do not necessarily equate to FOI/PA "requests." For example, a recent suit brought by the Center for National Security Studies involves 12 FOI/PA requests/appeals. Two FOIA suits, both closed, concerning the waiver of fees are not included in the above totals.

TAB C

Statement of
Katherine A. Meyer
Director
Freedom of Information Clearinghouse

Before the
Subcommittee on Intergovernmental Relations
Committee on Governmental Affairs
United States Senate

August 19, 1980

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on the need to improve government compliance with the Freedom of Information Act. I am the Director of the Freedom of Information Clearinghouse, which was established in 1972 as part of Ralph Nader's Center for the Study of Responsive Law. In its eight years of operation, the Clearinghouse has assisted the public and press in the effective use of open government laws, including the FOIA, the Privacy Act, the Government in the Sunshine Act and the Federal Advisory Committee Act. It was instrumental in the drafting of the 1974 amendments to the FOIA which strengthened the public's right of access to government held information. Clearinghouse attorneys have also litigated more FOIA cases than any other organization.

Since the 1974 amendments, the FOIA has proven to be an invaluable tool in providing the public with the means to participate in and scrutinize the workings of our government. Although there has been significant improvement in the overall administration of the Act, unfortunately too many federal agencies have not yet embraced the Act's mandate for the fullest possible disclosure. This recalcitrance is demonstrated by overly broad

interpretations of the Act's substantive exemptions, and by what continue to be much more exasperating for the FOIA user, excessive delays in processing requests, arbitrary denials of fee waiver applications, and unreasonable resistance to settling attorneys' fees claims brought by prevailing FOIA plaintiffs. It is the latter three administrative practices which I have chosen to focus on today, because they present the biggest procedural problems for FOIA requesters and are susceptible of being remedied by the establishment of some minimum uniform government standards. With the Subcommittee's permission, I would like to reserve the opportunity to supplement my remarks with further examples of the need for government reform in this area.

Delay

Agency delay in processing FOIA requests continues to be the single greatest obstacle to effective use of the Act. This is especially true for the news media for which timely access to government information is absolutely crucial to keeping the public informed on important matters of wide public concern. Consequently, although it was hoped that the inclusion of specific statutory time limits in the 1974 amendments would significantly increase media use of the Act, it has been our experience that this has not yet been the case and that it is much more fruitful for journalists to rely on inside sources and "leaks" of information than to resort to their statutory right of access to information under the FOIA.

This is by no means a problem experienced across the board with all government agencies. Some are conscientious about

responding to initial requests and appeals within the ten and twenty days required by statute and in granting access to non-exempt documents as soon as possible. However, we find that with too many other agencies, it is not uncommon for requesters to wait several weeks, months, and in some cases even years to obtain information which should be readily available. What is particularly troubling is that those agencies with which requesters consistently have problems, the CIA, FBI, Department of State, Justice and DOE, are the repositories of information of the most vital public interest.

For example, the Center for National Security Studies, a project of the American Civil Liberties Union, recently filed suit in federal district court here against the CIA to enjoin the agency from continuing its unreasonable delay and what the Center believes to be its discriminatory treatment in the processing of the Center's FOIA requests. (Center For National Security Studies v. CIA, Civ. No. 80-1235 (D.D.C. May 15, 1980).) The Center makes extensive use of the FOIA to obtain government documents concerning national security issues and illegal intelligence activities. This information is made available to scholars, historians, journalists and members of the general public and is often relied upon as the basis for testimony before Congress concerning our national security and the need for intelligence reform. The Center also publishes a monthly newsletter with a national circulation entitled "First Principles," and its members teach classes, give speeches, and publish numerous articles and books concerning our national security and first amendment rights using information obtained

under the FOIA. The complaint, a copy of which is attached for inclusion in the record, enumerates twelve separate instances of unreasonable delay by the CIA in responding to the Center's requests for information. In several cases, it has been over three years since the initial requests were filed, yet the agency still has neither produced the requested information nor justified its withholding. It is unquestionable that the Center's activities have been frustrated by such dilatory practices.

While the Justice Department has suggested that the solution to the delay problem is to amend the time limits to allow agencies to take up to as much as a year to respond to requests,*/ such an approach is entirely unjustified and would only serve to weaken agency compliance with the Act and the public's right of access.

The Act already amply provides for flexibility in meeting the time limits where the request is for voluminous records or the agency must consult with other offices or agencies in order to respond. Moreover, requesters invariably afford agencies additional time to reach their positions with respect to what will be released in order to avoid the costs of unnecessary litigation. They are also fully aware that the courts are all too willing to countenance a certain amount of delay where the agency has not demonstrated that it is acting in bad faith.

In our opinion the answer to the delay problem lies primarily in more efficient organization and use of agency resources and

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*/ See Amending the Freedom of Information Act: A Sneak Preview. Remarks by Associate Attorney General John H. Shenefield before the Conference on Open Government, Federal Bar Association, March 27, 1980.

personnel. To begin with, there should be a uniform policy establishing priority processing for FOIA requests. The policy should call for the abandonment of the first in/first out approach currently in use, in favor of a policy which gives first priority to requests for information of immediate public concern. (We can and do make exceptions!) For example, requests from the media should ordinarily take precedence over requests from individuals and business entities seeking information for their own personal use. Similarly, limited requests for information should be identified and handled quickly rather than set aside while the agency processes requests for massive pages of documents. At the same time, requesters of large amounts of information should be notified within the ten day time limit of the approximate time it will take the agency to process the request so that the requester can narrow the request if possible or specify the information he or she needs immediately.

A substantial amount of search time could be eliminated if the agencies were to improve their record keeping and indexing practices. Often times a requester is told that either the request cannot be processed at all or that it will take an indefinite period of time simply because the information cannot be identified in the agency's files on the basis of the description contained in the request. This presents a particular dilemma for historians and researchers who want information concerning a particular subject matter but have no idea how to key their requests to the filing system employed by the agency. The problem can best be dealt with by maintaining a centralized indexing system with extensive cross-referencing, so that desired records can easily be pulled. In the alternative, the agency should at a minimum

inform requesters of its system of indexing and assist them in reforming their requests accordingly.

We agree with the recent report of the Subcommittee on Administrative Practice and Procedure, that a major contributor to delay in processing requests is the use of unnecessary review levels. We have found that for many agencies, although it takes only one agency employee to deny a request for information, it takes numerous employees, and often senior officials of the agency, to approve the release of information. Given the overriding purpose of the 1974 amendments to increase the effective use of the FOIA, this situation should be reversed. There is simply no reason why agencies cannot train low level personnel in the appropriate application of the exemptions and authorize them to release non-exempt material. As the Subcommittee report reasoned,

> [i]n short, the greater the number of agency employees who have authority to grant an initial information request, and the fewer the number who have authority to deny a request, the less processing delay there is likely to be. Such organizational structures are also much more in keeping with the maximum disclosure philosophy of the FOIA.

Agency Implementation of the 1974 Amendments to the Freedom of Information Act, Report by the Staff of the Subcommittee on Administrative Practice and Procedure, Senate Comm. on Judiciary, 95th Cong., 2d Sess. (March, 1980) at 70.

Finally, to the extent that delay is genuinely caused by excessive backlogs of requests and understaffed FOIA offices, rather than inefficient administration, we urge the government to apply more resources to the administration of the FOIA. We strongly disagree with the argument cited by many agency officials in seeking relief from the requirements of the Act that the burden

of complying with the FOIA is deleterious to the public interest because it takes agency time and resources away from more important activities. There is no more important function of a democratic government than its dedication to an informed citizenry. The answer to the problem of inadequate resources for administering the FOIA is not to cutback on the public's right of access to government information, but rather in the first instance to apply the resources appropriated for the task in an efficient manner, and then to seek additional appropriations from Congress where needed.

In this regard, the Clearinghouse strongly recommends that the monies generated through the collection of search and duplication fees be put back into the operating budget of the particular agency rather than placed in the funds of the general Treasury as is now the case. Since it is a well known fact that overwhelmingly the greatest users of the FOIA are corporations, we estimate that up to two-thirds of the annual government expenditures for administering the Act could be recovered this way and reapplied to assist effective use of the law by the public for whom it was intended. However, we also firmly believe that those agencies needing additional funding in order to comply with the dictates and spirit of the FOIA should step forward and advocate their needs before Congress rather than joining in the current movement to restrict the use of the Act.

Fee Waivers

In keeping with the overall goal of improving the public's right of access under the FOIA, the 1974 amendments included a provision allowing agencies to waive or reduce the fees associated

with processing FOIA requests when release of the information can be considered as primarily benefitting the public. Although many agencies scrupulously adhere to this standard and waive or reduce the fees as a matter of course for public interest organizations, historians, and scholars, other agencies are unwilling to comply with the spirit of the provision. Indeed it is not uncommon for two agencies with the very same request for information to take opposite positions on the question of whether a waiver is warranted. While one will make the documents available immediately at no cost where there is a clear showing of public interest, the other becomes embroiled with the requester in what could be characterized as an endurance contest as to who will agree to bear the search and duplication costs.

Twice the government has been taken to court in cases involving requests for CIA documents of significant public importance where the agency refused to waive fees. In the first of these cases, Fitzgibbon v. CIA, Civ. No. 76-700 (D.D.C. January 10, 1979), the court held that an agency's decision not to waive fees is arbitrary and capricious when there is nothing in the denial to indicate how furnishing the information cannot be considered as primarily benefittingthe general public. In the second case, Eudey v. CIA, 478 F. Supp. 1175 (D.D.C. 1979), the court held that the CIA could not decline to waive fees simply because in its judgment a search for the requested records would not produce documents which could be made public.

The government did not appeal either of these two decisions and was, of course, required to waive fees in the specific cases involved. Nevertheless, both the CIA and other agencies,

including the FBI, continue to refuse to waive fees even where materials submitted by the requester make out a clear case for a public interest in the release of documents and where there is no countervailing evidence or information brought to the attention of the requester.

We believe that the Fitzgibbon and Eudey decisions are consistent with the clear congressional intent that fees not be used to discourage requests and that fees be waived so as to facilitate the widest possible release of information not exempt under the Act.

We believe that the various agencies will not on their own adopt the rules required by the Fitzgibbon and Eudey decisions and that a uniform policy is sorely needed. We recommend that the Attorney General issue a government-wide directive requiring the waiver of fees whenever a requester demonstrates the public value of the information and where the agency fails to present any evidence to the contrary. For implementation of such a policy, perhaps a three category system could be used. In the first category of requesters would be those groups and individuals who seek documents strictly for the benefit of the public and who also lack sufficient funding to bear the costs of obtaining information. This category, which would include non-profit public interest organizations, researchers, historians, and free-lance journalists should be granted automatic fee waivers. Second are those requesters who serve a public interest but who have substantial financial backing upon which to rely in obtaining information, such as reporters for major newspapers and television networks. For this category of requesters, while it would be appropriate to waive the cost of the search, it may not be unreasonable to charge

a portion or all of the duplication costs. Third, and the largest category of requesters, are those seeking information for a purely private interest, predominately corporations. Again, these costs should be recouped for the operating budget of the particular agency involved rather than funneled into the general Treasury.

The Attorney General's directive should also make it clear that an agency cannot refuse to grant fee waivers merely because it believes that there is no purpose to the further release of information on a subject or that a search of its files is unlikey to yield documents which are in fact releasable.

Fee waiver disputes present particular problems for requesters because they cannot even begin to limit the scope of their requests, and hence the costs involved, until they know what documents would be accessible. As a partial remedy to this problem, we recommend that all agencies establish procedures to allow the general public to review disclosable documents in a designated reading room. This practice, recently implemented by the CIA pursuant to a district court order*/ (45 Fed. Reg. 6781 (January 30, 1980)), affords requesters the opportunity to in effect conduct their own search and to reduce the amount of duplication required. It can also reduce the search time involved for subsequent requests for information which has already been released to another requester. In contrast to the CIA's new practice, the FBI adamantly resists this approach to accommodating FOIA requesters, and instead demands an advance payment against

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*/ The order was issued in Sims v. CIA, Civ. No. 78-2251 (April 12, 1979).

the total cost of duplicating all responsive documents before it will process the request any further.

Although the size of the request should have no bearing on the merits of whether a requester is entitled to a waiver, as a practical matter, in many cases, the narrower the request, the more likely the agency will waive duplication costs where there is an arguable public interest in disclosure. Therefore the agency should do everything possible to assist the requester in the narrowing process. In addition to making documents available for inspection in a public reading room (and in field offices around the country for those requesters who live outside the Washington area), agencies should provide requesters with indices of all responsive files.

Finally, agencies should be required to detail the reasons for denying a fee waiver and to provide a meaningful appeal process for such denials. All too often, the requester receives nothing more than a boiler plate denial stating that the agency has determined that a waiver is unwarranted. This practice is simply unacceptable in light of the Fitzgibbon and Eudey decisions which clearly place a burden on the agency to demonstrate how release of the information would not benefit the public.

Attorneys' Fees

The 1974 amendments sought to remove the substantial barrier to private enforcement of the FOIA by authorizing the courts to award attorneys' fees to a requester who has substantially prevailed under the Act. 5 U.S.C. § 552(a)(4)(E). In 1977, the Clearinghouse testified before the Subcommittee on Administrative

Practice and Procedure that in the first three years following the enactment of the amendment, the Justice Department had acted to impede the recovery of attorneys' fees by insisting on litigating virtually all attorneys' fees issues and by refusing to agree to pay FOIA attorneys the prevailing rates for comparable legal services. At that time we were hopeful that the Justice Department's approach to attorneys' fees was changing for the better as it began to show an increased willingness to settle claims out of court, and it announced its intention to issue formal guidelines evidencing a liberal interpretation of the attorneys' fees provision.

Now three years later, that hopeful assessment has dissolved and we are distressed to report that the Justice Department has taken a significant step backwards on the issue of attorneys' fees. Attached for the record is a recent letter to the Department detailing four examples of problems the Clearinghouse has experienced in resolving fee settlements with the government. By far the greatest problems we have encountered are the government's delay in responding to our efforts to settle fee claims before resorting to litigation, its refusal to compensate FOIA attorneys at the prevailing rates for attorneys of comparable reputation and experience, and its seeming arbitrariness in significantly reducing the amount of hours deemed compensable.

What is most disturbing is that the Department has yet to publish much needed guidelines for assessing attorney fee awards. In an April 29, 1977 letter to the Justice Department (copy attached), the Clearinghouse explained the importance of such guidelines to implementing the intent of the 1974 amendments and

in minimizing the ultimate cost to the government by avoiding further litigation on the issue. Today, we reiterate the need for such guidelines for determining eligibility, the appropriateness of an award, and the amount of just compensation, and we urge the Justice Department to adopt the specific proposals set forth in our letter.

* * *

Next 24 Page(s) In Document Exempt

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